

Draft

THE LAW ON FREE ACCESS TO INFORMATION

Podgorica, December 2011

I BASIC PROVISIONS

Subject

Article 1

Right on access to information held by public authorities shall be exercised in manner and according to procedure prescribed by this Law.

Principles and standards

Article 2

Access to information held by public authorities (hereinafter referred to as “access to information”) shall be based on the principles of free access to information, transparency in work of public authorities, the right of the public to know and equality of requests, and it shall be carried out at the level of standards set out in ratified international agreements on human rights and freedoms and in generally recognised rules of international law.

Free access to information

Article 3

Any national or foreign legal and natural entity shall be entitled to access the information, without being obliged to state the reasons or explain the interests for seeking the information.

Transparency of work

Article 4

Public authorities shall make available all of the information that ensure the transparency of work, foster the efficiency, effectiveness, and accountability, and affirms their integrity and legitimacy.

Right of the public to know

Article 5

The public shall exercise the right on access to information that is of importance to forming of opinions on the state of society and functioning of authorities, exercise of democratic control over authorities, and exercise of human rights and freedoms.

Equality of requests

Article 6

Public authorities shall provide any legal or physical entity with the access to information on an equal basis and under equal conditions, unless otherwise stipulated in this Law.

Public interest

Article 7

Access to information is of public interest.

Access to information may be restricted only in purpose of protecting the interests specified in this Law.

Gender sensitivity

Article 8

The expressions used in this Law for natural persons in the masculine gender shall be considered as including the feminine gender.

Definition of terms

Article 9

The terms and expressions used in this Law shall have the following meaning:

- 1) **public authority** shall mean a state authority (legislative, executive, judicial, administrative), local self-government authority, local administration authority, public institution and any other legal person founded by the state or in majority ownership of the state or local self-government, legal person financed from public resources, as well as well as a natural person, entrepreneur or legal person having public responsibilities or managing public funds;
- 2) **information held by public authorities** shall mean factual possession of the requested information by the public authority (their own information, as well as information reported by other government agencies or third persons), regardless of the grounds and manner of acquisition;
- 3) **publication of information** shall mean making the contents of information available;
- 4) **disclosure of information** shall mean the applicant or another individual not employed at the public authority holding the information becoming privy to the contents of information
- 5) **responsible person** shall be any person assigned to act upon requests for access to information and the individual responsible for legality of public authority's work;
- 6) **submission date** shall be the day when a request or other written brief of a natural or a legal person is received by a public authority;
- 7) **delivery date** shall be the day when a decision or another act of a public authority is delivered to an applicant;
- 8) **public official** shall mean a person who has such a status under the law governing the prevention of conflict of interest.

II ACCESS TO INFORMATION

Article 10

Information and access to information

Information shall be a document in any form, composed or received by public authority, on any basis, for which the public authority is obliged to register or keep it, in accordance with the law or other relevant regulations.

The right on access to information shall encompass the right to ask for, receive, use, disseminate, or publish the information and data consisted of.

Article 11

Access to information guide

The public authority shall develop, publish, and regularly update a guide for access to information held by it (hereinafter referred to as “the access to information guide”).

The access to information guide shall contain a catalogue of all types of documents, including public registers and public records, the address and e-mail address for submission of request, contact telephone, information on responsible persons, information on costs of access to information, and other data that are of importance to the exercise of the right of access to information held by the public authority.

Article 12

Proactive access to information

The public authority shall publish on its website following information:

- 1) the access to information guide;
- 2) programmes and work plans;
- 3) reports and other documents on work and state of play in areas within their competence;
- 4) drafts, proposals, and final texts of strategic documents, plans and programmes for their implementation;
- 5) draft and proposal of laws and other regulations;
- 6) single acts and contracts on use of financial resources originating from public revenues and of state-owned property;
- 7) list of civil servants, state employees and public officials and pay lists for them;
- 8) Decisions and other single acts that are of importance to rights, duties, and interests of third parties (building permits, land registry entries, determination of taxes etc.)

The public authority shall publish the information referred to in paragraph 1 of this Article, depending on the nature and type of information, within eight days as of the day of which they are created or adopted.

The public authority may publish on its website other information not covered by paragraph 1 of this Article.

When publishing information, the public authority shall protect in an adequate manner such personal data that affect privacy and data that have been classified, in accordance with the law.

Article 13

Access to information upon request

The public authority shall grant the access to information or a part thereof to any physical or legal entity seeking the access to information (hereinafter referred to as

“applicant”), that it holds at the time of dealing with the request, unless otherwise provided in this Law.

Access to public registries and public records

Article 14

The public authority shall allow the applicant to inspect public registries and public records held by it.

A request to inspect public registries and public records may be made verbally.

Public authority shall grant the access to information, in accordance with the paragraph 2 of this Article, within three days as of the day of which the access is requested, and it shall make an official note on it.

Restriction of access to information

Article 15

The public authority may restrict access to information or a part thereof if it is in the interest of following:

1) protection of privacy from disclosure of personal data, as follows:

- data from the Central Population Registry and its sources,
- unique personal identification number,
- biometric data,
- name of a child/minor,
- data on individuals who are adopted or are under guardianship,
- photos, audio and visual recordings of individuals outside public spaces,
- data on diagnosis of an illness, medical results and treatment of individuals,
- data on beneficiaries of social welfare and their incomes
- name of an adult in circumstances of jeopardised personal integrity,
- religious and national beliefs and sex life,
- data from records on sentenced individuals and individuals with imposed misdemeanour penalties,
- home address, phone number and e-mail address of a natural person without his/her consent;

2) prevention of investigation and criminal prosecution, especially information containing following:

- on reporting criminal act and perpetrator of it,
- on content of actions undertaken in pre-trial and criminal procedure;
- collected through observation and investigation,
- on secret surveillance measures;
- on protected witness and collaborators of justice;

3) performing the official duty in regard to:

- planning of inspection control and supervision by the public authority,
- consultations within and between public authorities regarding defining the positions and development of official documents and proposals for resolution of a case,

- work and decision making by collegial bodies, up to the moment of verification of the minutes of meeting/session of that body,
 - bringing and conduct of disciplinary proceedings;
- 4) security, defence, foreign, monetary and economic policy of Montenegro, and particularly information containing data marked as classified, in accordance with the laws regulating the field of data secrecy, and which refer to following:**
- threats to the constitutional order, independence and sovereignty of the state territory of Montenegro,
 - operations of holders of intelligence activities of other states that are of importance to national security,
 - counter-intelligence protection,
 - measures and activities of intelligence work from the area of national security,
 - formation, combat readiness of the Military of Montenegro and the use of military units,
 - buildings and installations, arms, equipment, special technical means exclusively designed to serve security and defence of the country and plans for their use,
 - security checks,
 - operative and intelligence work of the police during collection, processing, analysis and distribution of operative reports, assessments, plans, activities and actions,
 - securing of buildings, protected persons, public assemblies and mass gatherings and operative actions in connection therewith,
 - plans of prevention and management of emergencies,
 - management of international financial reserves,
 - risk management system in financial organisations,
 - exchange of information with international institutions and state authorities in relation to the prevention and detection of cash activities with elements of \criminal offences,
 - daily bank report on cash (plan of required resources, overview of the state of cash at banks, currency denomination structure, overview of daily cash flows),
 - amount of mandatory bank reserves,
 - strategy and term plan for control of banks,
 - work plans of internal audit, control and supervision of payment system and supplementing documents;
 - the state of and changes in cash deposits in the treasury and transport of money and treasury valuables, including transfer of currency across the border,
 - bank plans for operations in the situation of emergency,
 - security system of the treasury (project and other documents relating to technical security and technical protection of treasury premises,

documentation on handling of the keys to the treasury, documents on parameters and manner of tuning of the information system components and its protection, maintenance and information technology support to continuity of bank operations),

- owners and numbers of accounts opened in a bank and other information about clients learned by a bank in the process of providing banking services,
- The state of deposits and transactions in individual bank accounts of physical and legal persons that are not public authorities.

Access to information shall be restricted only when disclosure of information would significantly undermine any of interests referred to in paragraph 1 of this Article, or if there is possibility that disclosure of the information would cause damage to the interest that is higher than the interest of the public to know such information, unless otherwise provided by this Law.

Harm test for disclosure of information

Article 16

In access to information procedure, personal data protection referred to in Article 15, item 1 of this Law shall take precedence over the interest of the public to access information containing such data

The public authority shall decide upon a request for access to information containing classified data after obtaining a previous consent of the authority that proclaimed information as classified (classifying authority).

In the case referred to in paragraph 2 of this Article, the classifying authority shall, within eight days as of receiving a request for consent, deliver a corresponding decision to the public authority deciding upon the request for information access.

The harm test shall not be applied to data contained in information that is proclaimed as classified by the foreign state or an international organisation.

Prevailing public interest

Article 17

Prevailing public interest for disclosure of information, or a part thereof, exists when the requested information contains data that evidently refer to following:

- 1) corruption, non-observance of regulations, unauthorised use of public funds, or abuse of authority;
- 2) the existence of grounds to believe that a criminal offence has been committed or existence of reasons to challenge a court decision;
- 3) illegal receiving or spending of funds originating from public revenues;
- 4) threats to public security;
- 5) threats to life;
- 6) threats to public health;
- 7) threats to the environment;

The public authority shall grant the access to information or part thereof referred to in Article 25 herein in cases when there is prevailing public interest for disclosure of information.

Duration of restriction

Article 18

Restrictions on access to information for the purpose of protecting privacy, including data on protected witnesses and collaborators of justice shall last until the expiry of the timeframes set by the law governing archiving activity, except where the person to whom the information relates or, following his demise, his spouse, children, or parents consent to earlier publication of information.

Restrictions on access to information for the prevention of investigation and criminal prosecution, as well as performing official duties relating to bringing and conducting misdemeanour procedures shall last until the procedure is completed the latest.

Restrictions on access to information for the purpose of protection of security, defence, foreign, monetary, and economic policies of Montenegro may last not later then until the expiry of the timeframes set by the law governing data secrecy.

III PROCEDURE FOR ACCESS TO INFORMATION

Initiation of procedure

Article 19

Procedure for access to information shall be initiated upon a written request of an individual seeking access to information.

One request for information may refer to several pieces of information.

The request for access to information shall be submitted to the responsible authority by hand, mail, or e-mail (via fax, e-mail, etc).

If the applicant requests the public authority shall issue, or deliver, adequate proof confirming reception of the request for access to information.

No fee shall be charged for request for access to information.

Content of the request

Article 20

The request for access to information shall contain:

- 1) the name of the information or data that allow its identification;
- 2) the form in which the applicant wishes to access information;
- 3) Information on the applicant (name, family name and address of a natural person, or name and address of a legal person), and/or his or her attorney, representative or proxy);

The request may contain other data that are of importance for exercise of the right of access to the requested information.

Anonymous requests

Article 21

The public authority shall process upon an anonymous request seeking to ensure access to information via e-mail.

Assisting the applicant

Article 22

The public authority shall assist the applicant, as far as reasonably possible, to access the requested information.

Forms of access to information

Article 23

An applicant shall access the requested information by way of:

- 1) Direct insight in original or copy of information in premises of the public authority;
- 2) the applicant transcribing or scanning the information in the premises of a public authority;
- 3) delivery of a copy of the information to the applicant by hand, mail or e-mail

Public authority shall grant the access to information in such a form referred to in paragraph 1 herein as might be preferred by the applicant, unless the preference expressed is objectively unfeasible.

In purpose of allowing access to information in the form preferred by the applicant, the public authority shall convert, where possible and appropriate, the existing format of information into electronic or analogue form (scanning, copying, etc).

Access to information to persons with disabilities

Article 24

Disabled person shall be granted access to information in such a form and format as are fitting to his abilities and needs.

Form of access to a part of information

Article 25

If a restriction applies to a part of information, the public authority shall grant access to information by delivering a copy thereof to the applicant, after deleting the part of the information to which the restriction applies.

In the case referred in paragraph 1 of this Article, the part of the information to which the restriction applies shall be marked with a note "information deleted" and a notification of the extent to which the information was deleted.

Information shall be deleted in a manner that shall not destroy or damage the text, or the content of the information

Competent public authority

Article 26

The public authority that holds requested information shall be competent for deciding upon the request on access to information.

Access to publish information

Article 27

The public authority shall not be obliged to grant access to information that hold, as provided for by Article 23 of this Law, if that information is published in in Montenegro and available on the Internet.

In case referred to in paragraph 1 herein, the public authority shall inform the applicant in writing where and when the requested information was published within three working days as of the day when the request is submitted.

Application of rules of procedure

Article 28

The public authority shall decide upon request for access to information in short procedure by applying the rules of general administrative procedure, unless otherwise provided in this Law.

Correction to request

Article 29

If any request for the access to information is incomplete or indistinct and, therefore, it cannot be acted upon, any public authority shall invite, in written form, any applicant to eliminate deficiencies therein within eight day as of the day of delivering the notification thereof, whereby such public authority shall give necessary instructions for eliminating such deficiencies, and to warn applicant that a failure to remove the deficiencies within the set time limit will result in dismissal of the request.

In the case referred to in paragraph 1 of this Article, the deadline for processing the request shall commence on the day of submission the corrected request.

Dismissal of request

Article 30

The public authority shall dismiss a request for access to information in following cases:

- 1) it does not hold the requested information;
- 2) the applicant fails to act in accordance with Article 29, paragraph 1 of this Law.

Deciding upon request

Article 31

The public authority shall decide on the request for access to information by way of a decision granting access to information or a part thereof, or denying access.

The decision granting access to information or a part thereof shall specify:

- 1) the form in which the information may be accessed;
- 2) the time limit to access the information;
- 3) costs of procedure.

The decision denying the access to information shall contain detailed explanation of reasons for which access to the requested information has been denied.

Reasons for denying request

Article 32

The public authority shall deny the request for access to information if:

- 1) it requires that new information be generated;
- 2) the applicant was granted access to the identical information within period of the previous six months;
- 3) There is a reason referred to in Article 15 of this Law to restrict access to the requested information.

Deadline for deciding upon request

Article 33

The public authority shall make a decision on the request for access to information and deliver it to the applicant within eight working days following the adequate request has been submitted

If access to information is requested for the purpose of protecting the life or freedom of an individual, the public authority shall make a decision and deliver it to the applicant within 48 hours as of the hour of submission of the request.

The time limit referred to in paragraph 1 of this Article may be extended for 15 days, provided that:

- 1) the request refers to exceptionally voluminous information;
- 2) the request refers to information containing personal data that can be published before the expiry of the statutory time limit only with the consent of the person referred to in Article 18, paragraph 1 of this Law;
- 3) the request for access to information refers to classified information;
- 4) tracking the requested information entails search through a large volume of information and therefore disturbs performance of regular activities of the public authority.

In the case referred to in paragraph 3 of this Article, the public authority shall, within three working days after the request has been submitted, inform the applicant in writing of an extension of the time limit in which a decision on the request will be made.

Time limit for execution of decision

Article 34

The public authority shall execute the decision within three working days after the decision has been delivered to the applicant or within three working days after the day when the applicant has submitted a proof of payment of costs of procedure, if such costs have been specified in the decision.

Costs of procedure

Article 35

The applicant, in accordance with a regulation adopted by the Government of Montenegro, shall pay costs of procedure for access to information.

Costs of procedure for access to information include actual costs incurred by the public authority in relation to copying of documents and delivery of information to the applicant.

The regulation referred to paragraph 1 herein shall specify special costs for access to information in archives, libraries, and museums that represent archive, library, or museum material.

In case when a disabled person is actual applicant, any public authority shall bear the related procedure costs.

Costs of procedure referred to in paragraph 2 herein shall be paid before the applicant is provided with access to information.

If the applicant fails to submit proof of payment of costs of procedure in the specified amount, the public authority shall not provide him/her with access to the requested information.

Right to a complaint

Article 36

The applicant, or another individual having an interest, may make a complaint against the decision of the public authority on the request for access to information to an independent supervisory authority responsible for protection of personal data and access to information (hereinafter referred to as “the Agency”), and through the authority that has decided upon request in first instance.

Reasons for complaint

Article 37

A complaint may be lodged against the decision on request for access to information for the reasons set out in the law governing general administrative procedure.

Effect of complaint

Article 38

The complaint against a decision granting access to information shall not postpone the execution of the decision.

Activities of the first-instance authority upon the complaint

Article 39

The first-instance authority shall carry out, within its competencies defined by the law, all activities upon the complaint within three working days following the day when the complaint has been submitted.

Agency proceeding upon the complaint

Article 40

The Agency shall make a decision upon the complaint against a decision on the request for access to information and to deliver it to the complainant within 15 working days as of the day on which the complaint is submitted.

The complaint against a decision to the request for access to information shall be decided upon by the governing body of the Agency (hereinafter referred to as “the Council of the Agency”).

The Council of the Agency shall make a decision *in meritum* about the complaint, unless in case of silence of administration.

Competencies of the Agency

Article 41

In addition to the competences set forth in the law governing personal data protection, the Agency shall:

- 1) perform supervision over the legality of administrative decisions deciding upon requests for access to information and take the measures set forth by the law;
- 2) manage an information system of access to information;
- 3) monitor the state of play in the area of access to information and submit reports thereon;
- 4) submit requests for opening of misdemeanour proceedings for violations of this Law that fall outside the competence of inspection;

Powers of the Agency

Article 42

For the purpose of resolving complaints and performing supervision over the legality of decisions made in relation to requests for access to information, the Council of the Agency shall have the right to request following:

- 1) that the public authority submit to it the complete information to which access is requested, or a part thereof and other information and data that are required for decision making;
- 2) that the inspection responsible for control of office operations establishes whether the public authority is in possession of the requested information;

The public authority and inspection referred to in paragraph 1, item 2 herein shall, within three working days as of the day on which the request is submitted, deliver the requested information and data to the Council of the Agency.

The Council of the Agency shall not be entitled to determine whether the information to which access is requested has been properly classified.

Information system of the information access

Article 43

For monitoring state of play in area of the access to information, the Agency shall keep an information system of access to information (hereinafter referred to as “the information system”) providing a database on following:

- 1) public authorities;
- 2) requests for access to information, categorized by applicants, public authorities, types of information and requested forms of access to information;
- 3) decisions of public authorities made in relation to requests for access to information;
- 4) complaints against decisions made in relation to requests for access to information, categorized by applicants and authorities;
- 5) legal suits against decisions made in relation to requests for access to information categorized by applicants/plaintiff and public authority/defendant;
- 6) court decisions upon legal suits on against decisions on requests for access to information;
- 7) measures taken against public authorities for failing to act in accordance with this Law;

The ministry competent for public administration affairs shall specify the content and manner of keeping the information system.

Obligation to deliver acts and data

Article 44

Public authorities shall submit to the Agency data about petitions, acts and undertaken measures referred to in Article 43, paragraph 1 of this Law, within 8 working days as of the day when they are submitted, created, or undertaken.

Report on state of play in area of access to information

Article 45

The Agency shall submit, upon request, and at least once a year, to the Parliament of Montenegro a report on the state of play in the area of access to information.

Court protection

Article 46

The applicant and third interested person shall be entitled to court protection, in accordance with the law governing administrative dispute proceedings.

A court shall assess if the public authority properly marked data in requested information as classified, in accordance with the law governing the area of data secrecy.

Procedure of adjudicating a legal action in relation to access to information shall be urgent.

Protection of employee

Article 47

An employee of a public authority who, in bona fide performance of his/her duties, discloses information containing data on abuse of and irregularities in the performance of a public office or official powers may not be held responsible for a breach of a work duty.

V SUPERVISION

Inspection supervision

Article 48

Inspection supervision over the implementation of this Law in relation to: development, publication and updating of access to information guides; mandatory publication of information; timely resolution of requests for access to information; and complaints against decisions on requests for access to information shall be performed by the Ministry responsible for administrative affairs.

VI PENALTY PROVISIONS

Misdemeanours

Article 49

A fine ranging from 500 to 20.000 EUR shall be imposed upon the public authority that has the status of a legal person if:

- 1) it fails to develop, within 90 days as of the day of this Law's entry into force, the access to information guide containing information specified by the Law, fails to publish or regularly update it, at least once a year (Article 11 and 51 č);

- 2) it fails to publish on its website the information it is under a duty to publish (Article 12 paragraph 1);
- 3) it fails to provide an applicant with access to information or a part thereof, except in cases provided for in this Law (Article 13);
- 4) it fails to provide an applicant with an insight into public registry or public records (Article 14);
- 5) it fails to provide access to information whose publishing is of prevailing public interest (Article 17, paragraph 2);
- 6) it fails to issue or deliver to the applicant adequate proof on received request for access to information (Article 19, paragraph 4);
- 7) it fails to provide an applicant, to the greatest extent possible, with assistance in the realisation of access to information (Article 23);
- 8) it fails to provide an applicant with access to information in a manner requested by him/her, except where the requested manner is not objectively feasible, or if it fails to convert, where possible and appropriate, the existing format of information into electronic or analogue form (Article 23 paragraphs 2 and 3);
- 9) it fails to inform the applicant in written form, within three days as of the day on which the request is submitted as to where and when the requested information was published (Article 27 paragraph 2);
- 10) it fails to invite the applicant in writing within eight days as of the day on which the request is submitted to remove the deficiencies in the request, fails to instruct him how to remove the deficiencies or fails to inform him that the request will be dismissed if it is not remedied within the set time limit (Article 29 paragraph 1);
- 11) it fails to provide a detailed explanation of the reasons for denial to allow access to the requested information (Article 31 paragraph 3);
- 12) it fails to make a decision on a request for access to information or fails to submit the decision to the applicant within eight days as of the day on which the request is submitted (Article 33 paragraph 1);
- 13) in case of extension of the time limit for submission and delivery of a decision on a request for access to information, it fails to inform the applicant in writing, within three days as of the day on which the request is submitted about the extension of the time limit for resolution of the request (Article 33 paragraph 4);
- 14) it fails to execute a decision allowing access to information within three days as of the day on which the decision is delivered to the applicant, or of the day on which the applicant submits proof of payment of costs of procedure, if such costs have been specified by the decision (Article 34);
- 15) as a first-instance authority it fails to proceed upon a complaint against a decision on request for access to information within three working days as of the day on which the complaint is made (Article 39);
- 16) it fails to submit the requested information and data to the Council of the Agency within three working days as of the day on which the request is submitted (Article 42, paragraph 2);

17) it fails to submit data about petitions and acts referred to in Article 43 paragraph 1 of this Law to the Agency within eight days as of the day of on which they are submitted, created, or undertaken (Article 44);

18) it holds responsible an employee who, in bona fide performance of his/her duties, discloses information containing data on abuse of and irregularities in the performance of a public office or official powers Article 47);

Where a misdemeanour referred to in paragraph 1 herein has been committed by an entrepreneur who is a public authority he/she shall be imposed a fine ranging from Euro 150 to Euro 6 000.

The responsible officer in the public authority and a natural person who is the public authority shall be imposed a fine ranging from Euro 200 to 2 000 for a misdemeanour referred to in paragraph 1 of this Article.

Article 50

A fine ranging from Euro 200 to 2 000 shall be imposed on the responsible officer in the Agency, if the Agency fails to:

- 1) make a decision about a complaint and submit it to the applicant within 15 days of the day on which the complaint is submitted or fails to decide *in meritum* on complaint against a decision on access to information (Article 40 paragraphs 1 and 3);
- 2) keep an information system of access to information in the format specified by the Law (Article 43 paragraph 1);
- 3) submit a report on the state of play in the area of access to information (Article 45)

VII TRANSITIONAL AND FINAL PROVISIONS

Deadline for developing access to information guide

Article 51

Access to information guides, as provided for in this Law, shall be developed and made public on websites of public authorities in an adequate form within 30 days after the entry into force of this Law.

Bylaws

Article 52

Bylaws, in accordance with this Law, shall be adopted within 90 days from the day when this Law enters into force.

Establishment of information system

Article 53

The information system of access to information shall be introduced within 90 days from the day of adoption of a bylaw referred to in Article 43, paragraph 2 of this Law.

Initiated procedures

Article 54

Procedures for access to information initiated prior to implementation of this Law shall be completed in accordance with provisions of the previously valid Law.

Cessation of validity of previous regulations

Article 55

The Law on Free Access to Information (Official Gazette of Republic of Montenegro, no 68/05) shall be cease to exist on the day when this Law starts to implement.

Entry into force

Article 56

This Law shall enter into force on the eighth day as of its publication in the “Official Gazette of Montenegro”, and it shall be implemented after the expiry of six months of the date of entry into force.